

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:07-CR-7-BR-1
NO. 7:12-CV-245-BR

GARY DEAN CHAVIS, JR.,)
 Petitioner,)
)
)
)
)
)
v.)
)
UNITED STATES OF AMERICA,)
 Respondent.)

ORDER

This matter is before the court on petitioner's motion pursuant to 28 U.S.C. § 2255. (DE # 32.)

On 19 March 2007, pursuant to a plea agreement, petitioner pled guilty to one count of being a felon in possession of a firearm (Count One). On 19 July 2007, the court consolidated the instant criminal case with case No. 7:07-CR-58-BR. (DE # 24.) Thereafter, on 6 August 2007, pursuant to a plea agreement, petitioner pled guilty to possession of a destructive device in furtherance of a crime of violence, and aiding and abetting others in committing such act (Count Three). On 6 November 2007, the court sentenced petitioner to 180 months imprisonment, as an Armed Career Criminal under 18 U.S.C. § 924(e), on Count One and to 225 months imprisonment on Count Three, to be served consecutively to the sentence of imprisonment on Count One. Petitioner did not appeal from this judgment.

On 31 August 2012, he filed the instant motion *pro se* asserting one claim. He contends that he no longer qualifies as an Armed Career Criminal in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Pet., DE # 32, at 4.) He requests that he be re-sentenced without the Armed Career Criminal enhancement. (Id. at 12.) On 26 September 2012, the government filed a response to the motion. (DE # 36.) The government waives any statute of limitations defense, and it acknowledges that petitioner has a valid claim in light of Simmons.

(Id. at 1, 3-4.) Specifically, the government states, “the United States has no objection to the Court vacating Petitioner’s sentence as to Count 1 . . . and resentencing him without the application of the ACCA enhancement under 18 U.S.C. § 924(e).” (Id. at 4.) The court agrees with the parties that petitioner is entitled to relief.

Accordingly, the § 2255 motion is ALLOWED. The judgment entered 15 November 2007 is hereby VACATED. Re-sentencing on Count One is set for 3 December 2012.

This 3 October 2012.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge